IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2006

CORAM

THE HONOURABLE MR. JUSTICE P.SATHASIVAM

C.R.P.(PD)No.913 of 2006
& MP No.1 of 2006

Jeyasekaran .. Petitioner/Defendant

Vs.

R.Seerangan .. Respondent/Plaintiff

Civil Revision Petition under Article 227 of the Constitution of India against the order dated 21.10.2005 made in I.A.No.850 of 2005 in O.S.No.760 of 2004 on the file of Additional District Munsif, Namakkal.

For petitioner : Mr.R.Subramanian
For respondent : Mr.T.Dhanyakumar

ORDER

The above Civil Revision petition is directed against the order of the learned Additional District Munsif, Namakkal, dated 21.10.2005 made in I.A.No.850 of 2005 in O.S.No.760 of 2004, in and by which, the learned Judge has refused to condone the delay of 105 days in filing the petition to set aside the ex-parte decree.

2. Heard both sides.

3. In order to explain the delay, the petitioner, who is none else than the Headmaster of an Elementary School was examined as PW1. According to him, initially he was working as Headmaster in the Elementary School at Ramanathapuram and thereafter at Kalappa Naickenpatty. Though he has admitted that he failed to contact his advocate on 20.07.2004, on receipt of the notice in the execution petition attaching the salary, he met his counsel. According to him, at that time his wife was unwell and he was taking treatment for her. He also deposed before the Court that the fact that there was an ex-parte decree has not been informed by his counsel. In such circumstances, I am of the view that the reasons stated by PW1 are more probable and acceptable and the Court below ought to have considered his case.

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4. The learned Additional District Munsif, Namakkal, has commented the petitioner that he has failed to verify the stage of the proceedings then and there. It is relevant to point out that when a litigant entrust the matter to the lawyer, it is but proper on the part of the lawyer to take care of his interest and intimate the developments/orders passed by the Court then and there. For the fault of the counsel, the party cannot be penalised. I am satisfied that the petitioner had sufficient cause for not filing the petition to set aside the ex-parte decree in time and the Court below has committed an error in dismissing the said petition. Accordingly, the order dated 21.10.2005 made in I.A.No.850 of 2005 in O.S.No.760 of 2004 is set aside and the Civil Revision Petition is allowed. No costs. Consequently, M.P.No.1 of 2006 is closed.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Additional District Munsif, Namakkal.

2. The Record Keeper, VR Section, High Court, Madras.

+ one cc to Mr. T. Dhanyakumar, Advocate sr no. 57307

JRG(CO)
NM(08.12.2006)

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